

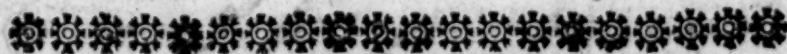
MATRIMONY ANALYSED.

Wherein is proposed

A FREE and CANDID INQUIRY

INTO THE

FORCE of the OBJECTIONS against the late
Act of Parliament *for the better preventing*
CLANDESTINE MARRIAGES.



[Price One Shilling and Six-pence.]

MATRIMONY ANALYZED.

Wherein is proved

A FREE and CANDID INQUIRY

INTO THE

Force of the Objections against the late
Act of Parliament for the better
Regulation of Matrimony.

[Printed by G. Smith and Son, London.]

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MATRIMONY ANALYSED,

Wherein is proposed

A FREE and CANDID INQUIRY

INTO THE

FORCE of the OBJECTIONS against the late
Act of Parliament for the better preventing
CLANDESTINE MARRIAGES.

Addressed to the

Right Honourable the Earl of *Holderness*.

BY

Sir T A N F I E L D L E M A N, Baronet.

— Fuit hæc sapientia quondam

.....
Concubitus prohibere vagos, dare jura maritis.



L O N D O N :

Printed for H. WHITRIDGE, at the *Royal Exchange*;
R. GRIFFITHS, in *Pater-noster Row*, and G.
WOODFALL, at *Charing-Cross*. 1755.

MATRIMONY ANALYSED.

WILLIAM W. WOOD

VERE AND A. W. WOOD

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TO THE
RIGHT HONOURABLE
THE
Earl of HOLDERNESSE.



T may, MY LORD, very possibly, and not very unjustly, be asked, first, what could induce me to apply my thoughts to a Subject so foreign to the Studies that have hitherto more immediately engaged them; and secondly, why I presume to trouble your Lordship with them. Permit me to hope your Lordship's

B

Ex-

Excuse, when I candidly confess, that Vanity had no small Share in the latter: I could not deny myself the Satisfaction of congratulating the *Meridian* of those Virtues, which I had the Honour of being better acquainted with in their *Dawn*. With respect to the former, I have only to say, that an *involuntary* Leisure having furnished me with many idle Hours, the prospect of amusing them agreeably, tempted me to write, and a Desire to render that amusement useful, directed me to the Choice of a Subject universally allowed to be of the utmost Importance to Society, and which has already afforded much Controversy.

Nor can it, MY LORD, be thought particularly extraordinary, that this Subject should have been so much controverted; a very little Experience of the Human Heart may serve to shew, with what Unwillingness every Thing is received, that carries with it but a seeming Tendency to obstruct the Gratification of our Passions, however

un-

unreasonable they may be in themselves, or however destructive to the Peace and Order of the Community. It has been seen, when a Law intended to restrain the detestable Vice of Drunkenness, not only met with popular Opposition, but Advocates were found to support that Opposition; the Clamours of the Mob were assisted by Arguments from the Prefs: Among others, it was called an Infringement of NATURAL LIBERTY, a Term that will for the most Part command the Approbation of those, who least understand its Import.

The same Argument has been strongly urged against the late Bill *for the better preventing Clandestine Marriages*; and particularly (if I do not misunderstand the Author) by a Gentleman whose Writings, in Defence of the established Religion of his Country, do him no little Honour. With what Justice this Principle has been now inculcated, is intended to be considered hereafter among the general Objec-

tions that have been raised against this Bill.

The Preventing Clandestine Marriages has never been deemed unworthy the Attention of any civil Community; nor has the unnoticed Permission of, or the too common Sanction afforded to, Marriages of this Kind, in *England*, escaped the Censure of judicious Foreigners: M. l'Abbé *le Blanc* (who, in his Remarks on our Manners and Customs, in general expresses himself with no less Good-nature than Good-sense) considers, not unjustly, these as an essential Defect in our civil Oeconomy. *England*, says he, "Is a Country of Liberty; and that Liberty is carried so far as to venture deliberately on the most absurd Conduct, and almost without incurring any Blame. Our Laws in *France* have wisely provided all possible Means to hinder Children from marrying against the Consent of their Parents; lest they should engage in Matches prejudicial to them-

“ themselves, and dishonourable to their
 “ Families. *Youth is too blind, and too much*
 “ *subject to Passion, to understand its true*
 “ *Interest.* The Laws of *England* are far
 “ otherwise in this Respect ; they all have
 “ a Tendency to favour even the most
 “ indecent Marriages. They do not re-
 “ quire by far enough of public Solemnity
 “ in an Act, which the more important
 “ it is to those who engage in it, *ought*
 “ *so much the more to interest those to whom*
 “ *they are related.* As the Wedding Ce-
 “ remony may here be transacted in
 “ any Place whatever, I have *heard* that
 “ a Clergyman who was in Prison, to get
 “ a more tolerable Subsistence, hung an
 “ Advertisement at his Window, with
 “ these Words : *Weddings performed cheap*
 “ *here.* I hardly know what to think of the
 “ Story : I don’t pretend to deny the Wis-
 “ dom of the *English* Legislature ; with-
 “ out Doubt they have had good Reason
 “ for the Laws they have enacted. But I
 “ am sure the Abuses of them are ex-
 “ tremely

" tremely pernicious; they authorize all
 " the Arts of the most common Prostitute
 " to seduce any young Gentleman; they
 " favour her Wickness and render UNAL-
 " TERABLE those shameful Ties in which
 " she has once entrapped him. It is im-
 " possible, in *England* to provide too wari-
 " ly against these Creatures; they have
 " a most wonderful Dexterity in laying
 " Snares for young Men, and in covering
 " by a Marriage, which brings them again
 " into Society, the Infamy of their past
 " Conduct, which had separated them
 " from it. Their most common Way is
 " to intoxicate the Men whom they have
 " such a Design upon, and then such a
 " Creature, who wants to be the *Wife* of
 " a Man, who perhaps would be ashamed
 " to own her for his *Mistress*, prevails on
 " him by her dangerous Caresses to own
 " before Witnesses, that he takes her for
 " his *Wife*. It often happens so, when
 " he imagines that he is only in Jest or
 " Sport. But all jesting in this Affair be-
 " comes

“ comes serious in *England*: *The YES is*
 “ *always taken in the strictest Sense of the*
 “ *Letter*. The Woman perhaps has a
 “ Chaplain ready; this Minister of the
 “ Gospel lends himself to the Mystery of
 “ Iniquity; and that which in *France*
 “ would be only a Farce, which the Civil
 “ Magistrate would be prepared to chastise,
 “ becomes in *England* a serious Act, au-
 “ thorized by the Laws. Whence it fre-
 “ quently happens, that a Man who went
 “ to Bed very easy, and very drunk, finds
 “ himself at waking, married to a Creature
 “ whom he most heartily despises and ab-
 “ hors. *Unions like these can only produce*
 “ *bad Citizens in a State*. If Men aban-
 “ don themselves brutally to their Passions,
 “ it should be the *Work* of the *Laws* to
 “ *replace* that Prudence which they then
 “ lost Sight of; and, as far as the Good
 “ of Society will permit, to *binder a momen-*
 “ *tary Weakness, or Frenzy*, from making
 “ them *unhappy the whole Remainder of*
 “ their *Lives*. I know two Brothers,
 “ who,

" who, to their great Sorrow, were so
 " caught by two Sisters; and who per-
 " haps aggravate their Fault, instead of re-
 " pairing it, by treating their Wives like
 " Servants. What makes me write you
 " a Letter on this Subject, is, that the
 " other Day a Gentleman of *Lincoln*, who
 " had been unfortunate in this Respect,
 " shot himself through the Head the next
 " Day, as soon as he understood the foolish
 " Step he had taken (a)."

Whether there be any Necessity to apo-
 logize for this long Quotation, is submitted
 to your Lordship. It will hardly be denied
 that Mankind generally wish for the Esteem
 of their Neighbours; how far we may be
 said to deserve it, in this Respect, the above
 speaks for itself; but how much more se-
 vere would have been the Animadversions of
 our ingenious *Frenchman* had he been con-
 vinced of the Truth of what he had only

(a) Letters of a *Frenchman*, N° X.

learnt from Information: Had he positively known, that in one of the most frequented Parts of this great City, every second or third House was devoted to this Abuse of Matrimony: That this shameful Business was not transacted privately, but Signs *publicly* hung out, denoting these Offices of Destruction, and Worriers employed to seduce unwary Passengers, with, *Do you want a Parson?* or, *Will you be married?* Questions not less common in these Places, than to be teased in *Monmouth-Street* with, *Will you buy any Cloaths?* That even our common News-papers were daily made use of to convey Invitations for the Prophanation of this sacred Union.

Prophanation I have called it, nor does it appear to me deserving any better Appellation: For in these Houses it was enough that the Victim was provided; the Priest was always ready for the Sacrifice. The incautious Youth, inflamed with Lust and Liquor, incentives to both, being readily

furnished in the same Places, might there at all Seasons, and at all Hours, seal his final Ruin: Here the inexperienced Virgin, deluded from the fond Arms and generous Protection of a tender Parent, might be *irreparably* betrayed into a Surrender of her Honour and Fortune to the abandoned Libertine, or infamous Sharper, under the Appearance of a Marriage, which might be afterwards destitute of legal Proof; seeing the Seducer, having once served his particular Purpose, might prevail to have the Register suppressed or cancelled. The licentious Prostitute, who had contracted large Debts to support her Extravagance, was in these Places furnished with a *Plea of Coverture*, whereby she was enabled to elude the honest Demands, and escape the just Resentment, of her defrauded Creditors; and it has happened that an industrious Tradesman has been totally undone, under the Pretence of a matrimonial Engagement, to which he was utterly a Stranger, and which, on *his* Part, had no real Existence.

ence (b). These are not merely possible or imaginary Evils, but such have been really known in many Instances.

The Ceremonies appointed by all civil Communities to be observed in the Celebration of Matrimony, plainly indicate that they were intended to be as public as possible; nor is it for Want of Ordinances with us to prohibit Clandestine Marriages, that they have been so long permitted with Impunity in *England*, but that the Punishments annexed to the Infringement of those Prohibitions had lost their Terror.

It is very well known, my LORD, that for several Centuries the Church claimed an unlimited authority to constitute Laws for the Regulation of Marriages, and exercised a sole Jurisdiction over matrimonial Contracts: Wherefore, as a Retrospection into the ecclesiastical Constitutions relative to such Contracts, may contribute somewhat

(b) A remarkable Attempt of this Kind may be seen in the Trial of *George Taylor* and *Mary Robinson*, Vide *Sessions-Paper*, N^o VIII. for the Year 1745.

towards elucidating the opinions of our Ancestors with Regard to this Matter, I flatter myself the Insertion of some of them will not be thought foreign to the present Purpose.

By a Canon of LANFRANC's, N^o V. 1076. it is ordained, " That no Man give
" his Daughter or Kinswoman in Marriage,
" *without the Priest's Benediction*: Other
" Marriage shall be deemed *Fornication*."

In a Canon of ANSELM's, N^o XXII. 1102. it is declared, " That Promises of Mar-
" riage made between Man and Woman,
" *without Witness*, be NULL, if either Party
" deny them."

Canon, HUBERT WALTER, N^o XXII. 1200. " Let no Marriage be contracted with-
" out *Banns(c) thrice published in the Church*,
" nor between Persons *unknown*. Let none
" be joined in Marriage but *publicly* in the

(c) It appears from hence that the Author of a Pamphlet entitled, *Considerations on this Act* was mistaken in his Assertion, that Banns were first instituted in the Year 1322.

" *Face*

“ *Face of the Church* ; otherwise LET IT
 “ NOT BE ALLOWED OF, except by the
 “ special Authority of the Bishop.” —

REYNOLDS's Constitutions, N^o VII. 1322.

“ Let Matrimony be celebrated as other
 “ *Sacraments*, with Reverence, in the Day
 “ Time, and in the Face of the Church,
 “ without Laughter, Sport, or Scoff. Let
 “ the Priests, while the Marriage is con-
 “ tracting, interrogate the People, under
 “ Pain of *Excommunication*, by *three pub-*
 “ *lic Banns*, concerning the Immunity of
 “ the Bridegroom and Bride, on three
 “ *Lord's-Days*, or Festivals, *distant* from
 “ each other. If the Priest neglect these
 “ *Banns*, let him not escape the Punish-
 “ ment lately enacted in the general Coun-
 “ cil. And let Priests often forbid such as
 “ are disposed to marry, to *plight their*
 “ *Troth* any where but in some *notable Place*
 “ before Priests, or *public Persons*, called
 “ *together for this Purpose*, under Pain of
 “ *Excommunication.*”

Con-

Constitution of SIMON MEPHAM, N^o
 VIII. 1328. “ Because *Inconveniencies* have
 “ *happened, and do daily happen, from Con-*
 “ *tracts of Matrimony made without preced-*
 “ *ing Publication of Banns,* We streightly
 “ charge all and singular our Suffragans,
 “ that they cause the Decretal (*d*), *whereas*
 “ *the Prohibition, &c.* (by which it is forbid,
 “ that any Contract of Matrimony, with-
 “ out Banns first published in every Parish
 “ and Diocess to which they belong (*e*),
 “ on several solemn Days, when the greatest
 “ *Number of People is present*) to be ex-
 “ plained in the vulgar Tongue, and firm-
 “ ly to be observed, by inflicting the Pe-
 “ nalty of *Suspension from Office for three*
 “ *Years* on all Priests, whether they be-

(*d*) The 51st Chapter of the *Lateran Council* 1216.

(*e*) *Lyndwood*, in his Gloss on this Constitution, observes, That it would be better if *Banns* were published where the *Parents* and *Kindred* live, as well as where the *Parties contracting* have their Abode; with whom our *English Editor* judiciously agrees, that it would be an excellent Law.

“ long

“ long to those Parishes, or not, who pre-
 “ sume to be present at Marriages con-
 “ tracted before solemn Publication of
 “ Banns; and due Punishment on those
 “ who do so contract Marriage, although
 “ there be no lawful Impediment. And
 “ let every Priest, whether regular or secu-
 “ lar, who dares celebrate, or be present
 “ at the Solemnization of Marriage any
 “ where, save in the *Parish Church* [*where*
 “ *the Bride or Bridegroom, or their Friends*
 “ *live (f)*] without the special Licence of
 “ the Dioceſan, be ſuſpended from his
 “ Office for a whole Year.”

Constitution of JOHN de STRATFORD,
 N^o XI. 1343 begins, “ The Luſt of Man
 “ is moſt prone to what is forbidden;” and
 then proceeds to enforce and explain the
 foregoing Constitution.

Constitution of WILLIAM la ZOUCHE,
 N^o VII. 1347. “ Although the ſacred

(f) Theſe Words are ſupplied by the Editor.

Canons

“ Canons forbid *Clandestine Marriages* (as
 “ *dangerous* to the *Souls* and *Bodies* of Men,
 “ and bringing *Damage* to the *Common-*
 “ *wealth*) under grievous Penalties; yet
 “ some contriving unlawful Marriages,
 “ and affecting the Dark, lest their Deeds
 “ should be reprov'd, procure every Day,
 “ in a damnable Manner, Marriages to be
 “ celebrated without *Publication* of Banns
 “ *duly* and *lawfully* made, by Means of
 “ *Chaplains* that have no Regard to the
 “ *Fear of God*, and the *Prohibition* of the
 “ *Laws*; without any Dread of the *Penances*
 “ past and published against such as contract
 “ Marriages in *this Manner*, or celebrate,
 “ or are *present* at them. We therefore,
 “ the Archbishop aforesaid, with the Con-
 “ sent of our Suffragans and Clergy, desir-
 “ ing to repress the *Impudence* of such *Chap-*
 “ *lains*, and of the Parties contracting, and
 “ of others who procure the Solemnization
 “ thereof, by an *Accumulation* of Punish-
 “ ments, do prohibit all the fore mentioned,
 “ under Pain of the greater Excommuni-
 “ cation,

“ cation, which we will that all of the
 “ City, Dioceſe, and Province, who tranſ-
 “ grefs this Conſtitution, do incur *ipſo facto* ;
 “ and let no Prieſt, of what Condition ſo-
 “ ever, whether ſecular or regular, cele-
 “ brate or be preſent at a Clandefline Mar-
 “ riage, but let *Banns* be publiſhed *three*
 “ *ſolemn* Days, as often as Marriage is to
 “ be ſolemnized between their Pariſhioners,
 “ in the Churches or Chapels to which the
 “ contracting Parties belong, a *ſufficient*
 “ *Time* being aſſigned for *making* the *Objec-*
 “ *tions* (g), if any can and will do it; and
 “ let the Prieſt, *notwithſtanding this*, EN-
 “ QUIRE, whether there be any Impedi-
 “ ment, or whether any one declares
 “ againſt, or contradicts it in any wiſe : And
 “ if any Objection, or *probable Suspicion*,
 “ do appear againſt their coupling together,
 D “ let

(g) The Reverend Mr. *Johnſon*, from whoſe *Collection*
 of Eccleſiaſtical Laws the afore-cited Canons and Con-
 ſtitutions are extracted, candidly wiſhes that ſome fixed
 Term had been always *indifpenſibly* obſerved.

“ let the Contract in *no wise* be celebrated,
 “ but *expresly forbidden*, till a competent
 “ Judge have declared in a *legal* Manner
 “ what ought to be done; or else till the
 “ Parties contracting are dispensed with by
 “ the *Licence* of the *superior Ordinary*, as
 “ to the *Intervals* of *Time* and the *Publi-*
 “ *cation of Banns.*”——

The over-hasty Caviller will perhaps ob-
 ject, what have we, at this Time, to do
 with old *popish* Ordinances: Such may be,
 very truly, told, that *these* Canons and
 Constitutions have been received, and stand
 as fully confirmed (*b*), as any other Laws of
 the Land. But the more immediate Inten-
 tion of reciting them here was to shew *that*
Clandestine Marriages have, if not always,
 at least for some Ages, been held in Ab-
 horrence; *that* it has been the constant En-
 deavour of those in whom the Power was
 lodged, to prescribe Rules for that Union, to
 prevent

(*b*) By Stat. 25 *Henry* 8, C. 19. § 7. 1 *Eliz.* C.
 1. § 6.

prevent them; *that* such Marriages have been considered as well *dangerous to the Souls and Bodies of Men*, as bringing *Damages* to the COMMONWEALTH (*i*); and lastly, *that* the Neglect of conforming to the appointed Ceremonies, particularly the Want of Publicity (*k*), was heretofore deemed sufficient to *avoid* or make *null* any matrimonial Contract.

The ecclesiastical Laws made subsequent to the Reformation, far from abrogating the above-mentioned, are still more explicit and restrictive in this Respect. The Canons of 1603 are, to the best of my Remembrance, the first that were solemnly constituted since that Period, notwithstanding the Powers vested in the Crown by Parliament for that Purpose (*l*): In the

D 2

LXIId

(*i*) Vide supra, p. 18.

(*k*) *Ibid.*

(*l*) The Crown was impowered to appoint thirty-two Persons, sixteen of the Clergy, and sixteen of the

Laity

LXIII of which it is ordained, " That no
 " Minister, upon Pain of Suspension *per*
 " *triennium ipso facto*, shall celebrate Ma-
 " trimony between any Persons, without a
 " Faculty or Licence granted by some of
 " the Persons, &c.—except *Banns* of
 " Matrimony have been first published
 " *three*

Laity to revise the Canons, and compose a Body of Ecclesiastical Laws, by Stat. 25 *Hen.* 8. 19. 27 *Hen.* 8. 15. 35 *Hen.* 8. 16. 3 and 4 *Edw.* 6. 11. 1 *Eliz.* 1. Nevertheless, it does not appear that any Thing material was done in Consequence of this Power during the Reign of *Henry* the Eighth. In *Edward* the Sixth's Time a new Body of Laws was compiled, and afterwards published, under the Title of *Reformatio Legum Ecclesiasticarum*; but the premature Death of that Prince prevented these Laws from receiving the Royal Sanction. Towards the latter End of Queen *Elizabeth*'s Reign a further Revision was made, when the Constitutions then prescribed were confirmed by her only during her Life; for which Reason it was thought necessary to be expeditious in compiling the Canons of 1603, which Bishop *Gibson* observes, are in the Main taken out of the Injunctions and Canons that had been made in the three foregoing Protestant Reigns, and which were made perpetual by King *James* the First.

“ *three* several Holidays or *Sundays*, in the
 “ Time of Divine Service, in the Parish-
 “ Churches or Chapels where the said *Par-*
 “ *ties dwell*. Neither shall any Minister,
 “ upon the *like Pain*, under any Pretence
 “ whatsoever, join any Persons so licensed
 “ in Marriage at *unreasonable* Times, but
 “ only between the Hours of *Eight* and
 “ *Twelve* in the *Forenoon*; nor in any *pri-*
 “ *vate Place*, but in either of the said
 “ *Churches* or *Chapels* where one of them
 “ *dwelleth*, and likewise in Time of *Di-*
 “ *vine Service*: Nor when *Banns* are *thrice*
 “ asked (and no Licence in that Respect
 “ necessary) before the PARENTS or GO-
 “ VERNORS of the Parties to be married,
 “ being under the Age of TWENTY ONE
 “ Years, shall either *personally*, or by *suffi-*
 “ *cient Testimony*, signify to him their
 “ CONSENT given to the said Marri-
 “ age (m).”

Such

Such as intend to enter into the State of Matrimony *godly* and *agreeable* to LAWS are admonished, " That, they make no *secret* " Contracts, without *Consent* and *Counsel* of " their *Parents* or *Elders*, under whose " Authority they be, contrary to God's " Laws and *Man's* Ordinances (*n*).

Canon C. " No Children under the " Age of TWENTY-ONE Years *compleat* " shall marry without the *Consent* of their " PARENTS, or of their GUARDIANS, and " Governors if their Parents be deceased." — To this Prohibition the REFORMATIO LEGUM, adds, " That all such Marriages " shall be VOID and NULL (*o*). " But with " this *Proviso*, " That in Case Parents or " Guardians shall be too dilatory in settling " the Terms of Marriages, or too rigid in " their Proposals, the Party aggrieved may " have Recourse to the *Ecclesiastical Ma-*
" *gistrate*,

(*n*) Gibson's Codex, p. 500.

(*o*) *Quod si fecerint, tales Nuptias, omnino non valere sancimus et ad nihilum recidere.*

“ *gistrate*, who is thereby empowered
 “ equitably to determine the same (*p*).”

At what Time the Church first assumed the Power of dispensing with any of the prescribed Formalities by *Licence* does not clearly appear; though it may be collected, from some of the before-cited Constitutions (*q*), that this Power had been exercised for many Years; that Frauds and Abuses had happened in the granting such Licences may be presumed from the Restrictions and Regulations appointed by the Canons of this Year to be observed, as well by the Parties granting, as by those to whom they were granted.

For

(*p*) *Quod si parentes vel tutores in providendis nuptiarum conditionibus nimium cessaverint aut in illis proponendis nimium duri et acerbi extiterint ad Magistratum Ecclesiasticum confugientur a quo partes eorum in hujusmodi difficultatibus agi volumus, et ejus æquitatē totam causam transigi. Gibson's Codex, p. 507.—*

(*q*) Vide supra, p. 18.

For Instance, Canon CII. appoints Security to be taken at the granting Licences,
 “ That [the Person or Persons soliciting]
 “ have obtained thereunto the *express Con-*
 “ *sent* of PARENTS (if they be living) or
 “ otherwise of their GUARDIANS and GO-
 “ VERNORS.” And, “ that they shall cele-
 “ brate the said Matrimony *publicly* in the
 “ *Parish Church* or *Chapel* where *one of*
 “ *them dwelleth*, and in *no other Place*; and
 “ that between the Hours of *Eight* and
 “ *Twelve* in the Forenoon.”

Canon CIII. “ For the avoiding of all
 “ Fraud and Collusion in the obtaining such
 “ Licences and Dispensations; We further
 “ constitute and appoint, that before any
 “ Licence be had or granted, it shall ap-
 “ pear to the Judge (*r*) by the *Oaths* of *two*
 “ sufficient *Witnesses*, one of them to be
 known

(*r*) By the Constitution of 1597 the Assurance to be given to the Judge was——“ *Parentum vel Gubernatorum significatione personaliter facta, vel Chiro-*
 “ *graphis*

“ *known* to the *Judge* himself, or to some
 “ other Person of good Reputation and
 “ *known* likewise to the said *Judge*, that
 “ the exprefs Consent of the PARENTS, or
 “ PARENT, if one be dead, or GUARDI-
 “ AN, or GUARDIANS, is thereunto had
 “ and obtained.”——

E

Canon

“ *graphis ipsorum; quibus fidem habendam esse non puta-*
 “ *mus, nisi per nuncios honestæ conditionis et famæ*
 “ *illæ sæ mittantur; qui fidem faciant, se de parentum*
 “ *aut Gubernatorum manu Chirographa hujusmodi rece-*
 “ *pisse veris nominibus ac cognominibus per hujusmodi nun-*
 “ *cios designandorum: Cujus Chirographi exhibitionis ac ju-*
 “ *ramenti pernuncium præstiti, actum conscribi volumus.*”

—— That the Consent of *Parents* or *Guardians* shall
 be signified personally or under their own Hand-writ-
 ing; to the latter of which no Credit shall be given,
 unless it is produced by Messengers in good Circum-
 stances, and of unblemished Characters; who shall
 make Oath that themselves received such Hand-writing
 from the Hands of the said *Parents* or *Guardians*, and
 that they are signed with their true Christian and Sir-
 names; which Hand-writing and Oath we order to be
 duly registred. *Gibson's Codex*, p. 515.

Canon CIV. " If both the Parties which
 " are to marry, being in *Widow-hood*, do
 " seek a Faculty for the forbearing of
 " Banns, then the Clauses before-men-
 " tioned, requiring the *Parents Consents*,
 " may be omitted ; but the Parishes where
 " *they dwell*, both shall be expressed in the
 " Licence, as also the *Parish* named where
 " the Marriage shall be celebrated." And
 in Failure thereof, Punishments are pre-
 scribed for all that shall offend in the
 Premises ; besides which, it is declared,
 " that every such Licence or Dispensation
 " shall be held *void* to *all Effects* and Pur-
 " poses, as if there never had been any
 " such granted, and the Parties marrying,
 " by Virtue thereof, shall be subject to the
 " Punishments which are appointed for
 " *Clandestine Marriages*."

The royal Authority, which gave a sanc-
 tion to these Canons(*s*), likewise com-
 mands,

(*s*) These Canons were also further confirmed by
 Stat. 13. Ch. 2. Cap. 12. §. 5. And in the 18th of
 the

mands, that they should be read once a Year in all Parish Churches and Chapels. Why this Injunction has been neglected is not in my Power to determine, or indeed to assign any *plausible* Reason for ; but it may be no ill-grounded Presumption to suppose, that had they, who were inclined to engage in this Union, been frequently and properly put in mind of their Duty in this Respect, many of the Mischiefs notoriously produced by *Clandestine* Marriages, would in all Probability have been prevented ; for from hence it manifestly appears, that the Consent of *Parents* or *Guardians*, before the Age of *twenty-one* Years, has been long thought by the Church, and by a protestant

E 2 Church,

the Injunctions given to the Archbishops by his Majesty King *William* the Third, 1694, it is expressly ordained, “ That no Licence for Marriage without
 “ Banns shall be granted by any ecclesiastical Judge,
 “ without first taking the *Oaths* of *two sufficient Wit-*
 “ *nesses*, and also sufficient *Security* for performing the
 “ *Condition* of the Licence according to the 102d and
 “ 103d CANONS.”

Church, *essential* to the Confirmation of a matrimonial Contract; nor did our earliest Reformers apprehend themselves debarred of a Power to declare indiscreet Contracts of no Effect. What has more particularly induced me to so much Prolixity on this Head, is, that the People have been industriously taught to believe the late Act *for the better preventing Clandestine Marriages*, a *new* and *tyrannical* Invasion of their Liberties; whereas the candid and dispassionate Mind cannot but readily perceive, that, in Reality, it is no more than giving a necessary Force to Laws that have, for Ages past, at least intentionally, subsisted, and which have, for as long, been generally deemed prudent and salutary.

The Censures and other Punishments denounced by the ecclesiastical Laws, as well against the Celebrators as Contractors of such prohibited Matches, leave it out of Doubt, that the Church has always disapproved,

proved, and, so far as her Power extended, has discouraged them.

In the next Place, it may not be improper to take Notice of what the *Civil Law* has intended and appointed relative to this Subject. It is not designed to enter here into a minute Detail of all the disqualifying Circumstances that prohibited Marriages among the *Romans*, nor of the Penalties annexed to those Prohibitions; it may suffice to observe with Regard to them, that these Disabilities were numerous, that in some Cases the Punishment was *capital*, and in most a *Rescission* of the Contract. The commonly received Opinions of the *Christian* Emperors, and what they have instituted, may be in some Measure collected from our judicious Countryman Dr. *Wood*; who, in his *Treatise upon Laws in general*, observes, “ That the Band
 “ of Matrimony being framed by the
 “ Hand of God, it ought to be celebrated
 “ after such a Manner as becomes the Sa-
 “ credness

“ credness of the Institution ; from whence
 “ it *naturally* follows, that Chastity ought to
 “ be preserved both before and after Mar-
 “ riage ; that there should be a reciprocal
 “ Choice of the Persons engaging ; *that*
 “ it *should be made with the* CONSENT of
 “ PARENTS, *who in many Respects hold the*
 “ *Place of* GOD, and that it should be ce-
 “ lebrated by the Ministry of the Church,
 “ where this Union is to receive the Bene-
 “ fits of that Blessing which God had pro-
 “ nounced upon his own Institution (t).”

In his *Institute* the same Author gives it
 as, what has been held to be, Law, “ That
 “ there *must* be the Consent of the Parties
 “ contracting, and of the *Parents* (the
 “ Consent of the Mother is not necessary)
 “ if the Children are not emancipated (u),
 “ and

(t) *Wood's Institute of Imperial and Civil Law*, p.
 9, 10. To the same Purpose may be seen *Domat's Civil*
Law in its natural Order, p. 39.

(u) As the Term *emancipated* may not be familiar to
 every Reader, it may not be amiss to inform such as
 are

“ and out of their Power. If the *Father*
 “ is under the Power of the *Grandfather*,
 “ the Consent of both is requisite. But if
 “ the Woman, *Widow*, or *Virgin*, is un-
 “ der *twenty-five* Years of Age (although
 “ she is emancipated) she must be wholly
 “ under the *Power* of her *Father*, unless
 “ he command Obedience to an improper
 “ Marriage; and after his Decease she is
 “ under the *Controul* of her *Mother*; but
 “ if the *Mother* is froward, and dissents
 “ *without Reason*, the *Magistrate* may in-
 “ terpose upon Complaint. This *Consent*
 “ must be *precedent* to the Marriage, or at
 “ the

are unacquainted with its Import, that among the *Ro-*
mans all *Children* were supposed to be under so absolute
 a Subjection to their *Parents*, that the former were in-
 capable of any Act or Deed, or even of enjoying the
 Produce of their Industry, without the Consent of the
 latter; and that before he could be released from this
 Subjection, the Child should, by an imaginary Sale,
 be sold three Times by his Father to another Person;
 which was called *Emancipation*, whereby he became
 free, and enabled to possess such personal Property as
 himself should acquire.

“ the very Time ; for an Agreement or
 “ Confirmation afterwards is not sufficient.
 “ But if the Father is present, and does
 “ not contradict, his Silence shall be pre-
 “ sumed a Consent. And *unless* this *Con-*
 “ *sent* is *added*, it is to be accounted *no*
 “ *Marriage*, and the *Children* are to be re-
 “ puted *illegitimate* ; which is to be under-
 “ stood rather as to their Claims of *civil*
 “ Rights, and Advantages arising from it.
 “ For it seems more prudent not to dissolve
 “ the *Ties* of *Nature*.”—— As this last
 Distinction is intended to be fully considered
 by and by, it is not necessary to take particu-
 lar Notice of it at present : But it would be
 Injustice to the learned Author from whom
 the above is cited, to omit his pertinent Re-
 mark upon this Subject, where he infers,
 “ that though the *English* follow the *Pon-*
 “ *tifical* Law, and by *Statute* only punish
 “ the Parties and the Minister that marries
 “ them *without Licence*, from the Ordi-
 “ nary or the *Publication* of *Banns* ;” yet
 he

he “ thinks the CIVIL LAW gives the
WISEST DETERMINATION.”

It must be confessed, that our *Statute Laws* have expressed very little with Regard to matrimonial Contracts; those in the Time of *Henry* the Eighth appear rather calculated to serve the particular Purposes of that Prince ; nevertheless these two Points seem to have been constantly had in View, to preserve inviolably the Custody and Tuition of their Children, or Wards, to the respective Parents or Guardians, and the preventing *Clandestine* Marriages. As to the former, this Care seems indeed to have been limited to those in a superior Station of Life, to those who were, or might be, entitled to the Possession of Lands : Of this Sort are several very early Acts of Parliament (*w*), inflicting Penalties on Wards marrying without the Consent

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(*w*) 20th *Hen.* 3. C. 6. 2d and 3d. *Edw.* 1. C. 21. 5th and 6th of the same, C. 12.

of those in whose Power they legally were, as well as on the Ravisher or Seducer. In *Stat.* of the 4th and 5th of *Philip* and *Mary* (x), it is expressly declared, that such taking or conveying away, either by Force or Fraud, Children from their Parents, Friends, or Kinsfolks tends to “ the *Dis-*
 “ *pleasure* of *Almighty God*, to the *Dispa-*
 “ *ragement* of the said Children, and to
 “ the extreme, continual *Heaviness* of all
 “ their *Friends*.” Wherefore it is enacted,
 “ that none shall take away, or cause to be
 “ taken away, any Maid or Woman Child
 “ within the Age of sixteen Years (*though*
 “ *it be not against her Will*) without the
 “ *Consent* of the *Father* or *Mother* of such
 “ Maid, or of such *Person* appointed to be
 “ *Governor* or *Guardian* by the *Father* in
 “ his *Life-time*, or by *Will* after his
 “ *Death*, upon Penalty of *two Years* *Impri-*
 “ *sonment*.—— And if any such Maid is
 “ deflowered or *married* against the *Will*

(x) Cap. 8. N. B. This Act extends only to Maidens.

“ of

“ of the Father, if he is living, or against
 “ the Will of the Mother, having Custody
 “ of such Maiden, if the Father is dead,
 “ the Offender shall suffer *five Years* Im-
 “ prisonment.— And if any such Child
 “ above the Age of *twelve Years*, and un-
 “ der the Age of *sixteen*, do consent to such
 “ Marriage, the next of Kin of the said
 “ Woman-Child, to whom the Inherit-
 “ ance should descend or come after the
 “ Decease of the said Woman-Child, shall,
 “ from the Assent or Agreement, enjoy all
 “ Lands, &c. as the said Woman-Child
 “ had in Possession, Reversion, or Remainder,
 “ at the Time of the Assent, during the
 “ Life of such Woman-Child.”

The Prevention of *Clandestine* Marriage
 has been also attempted by some more mo-
 dern Laws; whereby it is declared, “ that
 “ every *Parson, Vicar, or Curate*, who
 “ shall himself marry, or who shall *substi-*
 “ tute, or knowingly permit any other Mi-
 “ nister to marry any Persons in any Church

“ or Chapel to such Parson, &c. *belonging,*
 “ *without* Publication of *Banns* or *Licence,*
 “ shall forfeit 100 *l.*— And every Man
 “ married *without Licence* or Publication
 “ of *Banns* shall forfeit 10 *l.*— Every
 “ Sexton or Parish-Clerk assisting at such
 “ Marriage, 5 *l.* (y)”

Should it be objected, that these Laws were more properly intended to secure the Duties they imposed, it ought to be remembered that the Legislature had long before enjoined (z) the Observance of the same Formalities in the Celebration of Marriages.

Our Fellow-Subjects of *Scotland* have very fully expressed their Sentiments upon this Subject, in the Preamble to an *Act* of that Kingdom, passed several Years ago,
 —“ Our sovereign Lord and the Estates
 “ of the present Parliament, (say they)
 “ considering how *necessary* it is, that *no*
 “ *Marriage*

(y) 7 and 8 *Will.* 3. Cap. 35. 10 *Anne*, Cap. 19.

(z) By the 5th and 6th of *Edw.* 6. Cap. 12.

“ *Marriage* be celebrated, *but* according
 “ to the laudable Order and Constitution of
 “ this *Kirk*, and by such Persons as are by
 “ the Authority of this *Kirk* warranted to
 “ celebrate the same. And that notwith-
 “ standing hereof, fundry, either out of
 “ Disaffection to the Religion presently
 “ professed in this Kingdom, and being
 “ desirous to eschew the Censures of this
 “ *Kirk*, or to satisfy their Promise of Mar-
 “ riage formerly made to others, or to *de-*
 “ *cline* the *Concurrence* and *Consent* of *Pa-*
 “ *rents*, or *others having Interest*, or out of
 “ some *other unlawful* Pretext, do procure
 “ themselves to be married, and are mar-
 “ ried either in a *clandestine* Way, contrary
 “ to the established Order of the *Kirk*, or
 “ by Jesuits, Priests deposed, or suspended
 “ Ministers, or any other, not authorized
 “ by this *Kirk*. THEREFORE, his Majesty,
 “ &c.”—— Whereby very heavy pecuniary
 Penalties, in Proportion to their respective
 Ranks, are imposed upon the Contractors of
 all private Marriages, and the Punishment
 in-

inflicted upon the Celebrator is *perpetual Banishment* (a).

In *Ireland* their Laws have proceeded still further. They had for many Years experienced the Inutility of ecclesiastical Censures, of Fines, and Imprisonment; and therefore, wisely determined to strike at the Root of the Grievances produced by Clandestine Marriages, have decreed,
 “ That all Marriages and matrimonial
 “ Contracts, where either of the Parties are
 “ under the Age of *twenty-one* Years, had
 “ *without* the *Consent* of the Father, if liv-
 “ ing, in Writing, first from under his Hand
 “ obtained, or, if dead, of the Guardian,
 “ obtained in the same Manner, or of the
 “ Lord Chancellor, or Keeper of the Great
 “ Seal, in Case no Guardian be appointed,
 “ shall be void, and shall not be adjudged
 “ by any spiritual Court, *Contracts* or *Mar-*
 “ *riages* (b).”—— To

(a) *Charles* the Second. Sess. 1. Cap. 34, confirmed in Sess. 3, of the same Reign, Cap. 9. whereby it is further declared, that all Persons not married by a Person lawfully authorized, “ shall amit and lose any Right or Interest they may have by that Marriage, *jure mariti vel jure relicte.*”

(b) 9 Geo. 2. Cap. 11. Entitled, *An Act for the more effectual preventing of Clandestine Marriages.*

To this let me add, as a Demonstration that the Legislature of this, our Sister-Kingdom, did not imagine themselves precluded from a Power of annulling such Marriages as they thought inconsistent with the well-being of the Community; they have in a subsequent Act declared, “ Every Marriage celebrated between any Papist and
 “ any Person who hath been, or hath professed him or herself a Protestant at any
 “ Time within twelve Months before such
 “ Celebration of Marriage, or between two
 “ Protestants, if celebrated by a Popish
 “ Priest, shall be *absolutely* NULL and
 “ VOID.”

The same Law further enacts, that the foregoing, as well as this Act, “ shall be read
 “ once a Year in all Parish-Churches, and
 “ all public Chapels, and other Places of
 “ public Worship, by the Parson, Vicar,
 “ or Curate of the respective Parishes, or
 “ Chapels, immediately after Morning-
 “ Prayers,

“ Prayers, *and* in open Court, at every
 “ general Quarter-Sessions of the Peace(c).”

This cursory Review of the matrimonial
 Laws, Laws which may, not unfairly, be
 said to have had their Rise and Existence
 chiefly among ourselves, may serve to
 evince the Unanimity of their Intention.
 They all agree in asserting the Propriety of
parental Consent, and *open* Celebration in the
 Face of the Church, and that they are abso-
 lutely necessary Constituents to a *legal* Mar-
 riage; to which may be added, that this Ce-
 lebration is expressly directed to be in one of
 the Parish-Churches to which the contract-
 ing Parties *really belong*. Thus have the
 Laws

(c) 19. Geo. 2. C. 13. An Act for *annulling* all
 Marriages to be celebrated by any popish Priest, be-
 tween Protestant and Protestant, or between Protestant
 and Papist. And to amend and make more effectual
 an Act of her late Majesty Queen *Anne*, entitled, *An*
Act for the more effectual preventing the taking away and
marrying Children against the Wills of their Parents or
Guardians.

Law ordained, but how different has been the Practice ; and to what shall this shameful Evasion of those Laws be ascribed ? The Reason, MY LORD, is obvious : The *Civil Law* has given place to the *Pontifical* ; our Statute Laws prescribe only *pecuniary* Penalties, irrecoverable by the *Poverty* of some, and unfelt by the *Opulence* of others ; infomuch that the Church has been very long, *perhaps* too long, complimented with the sole Cognizance of matrimonial Causes : And it is a Truth, though to *everybody* it may not be a very pleasing Truth, that ecclesiastical Thunder, has in this *enlightened* Age lost much of its Terror. For can it be presumed that they, who, by the very Act, shew a Contempt of the Church and its Ordinances, should have any extraordinary Regard to its Censures ? Nevertheless, Offenders of this Sort ought to be told, that tho' they have escaped, they have not the less deserved Punishment.

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But

But let it not be understood, that any Thing is hereby meant derogatory to the Interests or Authority of Religion, or its Ministers, for whom no one has a more sincere Reverence ; my only Design is to shew the Inefficacy of our former Laws to remove, what on all Hands has been admitted a Reproach to, and a Nuisance in, our political Oeconomy. Nor can there be a stronger Proof of the Impotence of those Laws than the enormous Encrease and Prevalence of the Mischiefs they were designed to restrain : Mischiefs that either already had, or, very probably, might have affected, and have been equally dangerous to every private Family in the Kingdom.

It will hardly be denied but this was a Malady our Constitution was grievously sick of, and that it was as universally wished that a Remedy might be provided for it. Was it fitting the Patient should any longer remain under the Care of Physicians, who wanted either Industry
or

or Power to effectuate a Cure, and who had long suffered their own Prescriptions to be openly eluded?—To be more explicit: Let any one compare the Appointments made by the Canons for the granting of Licences with the modern Practice; Do they in whom the Power is lodged of granting these Licences take the necessary Cautions for parental Consent, or do they oblige the contracting Parties to marry *only* in one of their respective *Parish-Churches*? Are not these Particulars absolutely required by the Canons (*d*)? May not this Carelessness have contributed to the Encrease of prohibited Marriages? And is it not probable, that Negligence or Avarice have been the Occasion of an Omision, which Time and Custom may have since been thought sufficient to authorize?

The further Interposition of the Legislature therefore became immediately necessary

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(*d*) Vide *supra*, 20.

to prevent the many confessed (e) “ *Mischiefs and Inconveniences* arising from “ *Clandestine Marriages.*” They have interposed, and how have they proceeded? They have only endeavoured to enforce and facilitate the Execution of Laws former Ages had approved, and which only Indolence and Venality had contrived to suspend, meerly for the Gratification of the most unworthy Appetites, Lust and Lucre.

But it is from a serious and dispassionate Consideration of the Bill itself, that a true Judgment must be formed of the Propriety or Impropriety of the Clamours raised against it.—In the first Clause it is *enacted*, that no Marriage shall be celebrated without *Publication* of *Banns*; that this Publication shall be on *three Sundays*, and in the *Parish-Churches* where *each* of the contracting Parties respectively *dwell*; that *all* the *Ceremonies* prescribed by the *Rubric* shall
be

(e) In the Preamble to the late Act,

be fully complied with, and the Marriage solemnized in *no other* Place but in one of the *Parish-Churches* where such Banns have been published; also in the second Clause, it is provided, that the Minister have seven Days Notice of the Names and Residence of the Persons intending Marriage, *previous* to his being obliged to publish such Banns.

So the *new* appoints; wherein does it differ from the *old* Laws? It directs the Publication of Banns to be only on *Sundays*, *exclusive* of Festivals, which the *latter* permitted; and it obliges a Week's prior Notice to be given to the Minister: What Sort of People must they be, who can lay any Weight upon so trifling an Alteration, which deserves more properly to be deemed an expedient Reformation? The Design of proclaiming *Banns* was manifestly to ascertain the positive *Immunity* of the contracting Parties, and to that Purpose they were directed to be published at *such Times* as the *greatest Number* of *People* was

was *present* (f): It is very well known that the *Festivals* appointed to be observed by the Church are not held in the same Respect they formerly were; and that most of those which have been heretofore considered as *Holy-Days*, are now looked upon as Seasons affording a Relaxation from Labour, and applied much oftener to Diversion than Devotion. How far this Change of Manners is reconcileable to Prudence or Decency, let others determine; that it is so, can hardly be denied; inasmuch, that in some Churches, were it not for the Attendance of a few poor old Women, unfit for either Work or Play, the Parson might frequently be reduced to the Necessity which *St. Patrick's Dean*, of facetious Memory, is reported to have once laboured under, to begin the Service, with, only, *Dearly beloved Roger*. It was therefore no more than correspondent with the original Institution of Banns, to direct their Publication at those Times, when it was

(f) Vide Supra, p. 14.

was most probable that the *greatest* Number of People would be assembled together.

But say these industrious Fault-finders, the extraordinary Protraction of Time enjoined by this Act, antecedent to the Solemnization of Marriage, may render *Matrimony impracticable* to *some* of the lower Class of People, particularly Seamen, and *difficult* to *all*. A Delay of a *whole* Month (by their Account) is now required, whereas before they might be united in a Week or less; in which Time the Man may change his Mind [*and so may the Woman*] or their Passions may be so warm, that they may not chuse to wait for the Ceremony, but agree to go to Bed together without; from whence may proceed a Multiplication of Bastards.—So stands the Objection; but surely it is not invincible. May not this (*not very extravagant*) Prolongation of Time have as many *real* Conveniences, as *supposed* Inconveniences? May it not, by bringing the Persons, about to enter *hastily* into Wedlock,

lock, more *intimately* acquainted with each other, contribute to discover mutual Imperfections in Temper or Morals, which, if they had been concealed till the *indissoluble* Knot was tied, might have rendered the State intended for *Help* and *Comfort*, an insupportable *Burthen* and *Grievance*? And will it not afford a reasonable Suspicion that they, who could not prevail on themselves to submit to so *short a* Delay, for the Indulgence of their Passions, would have been as little tenacious of their more *solemn* Engagements?

The above Considerations may perhaps serve to satisfy a well-meaning Judgment, of there being no great Impropriety in these Injunctions, even admitting the Delay occasioned by them as extraordinary as has been represented. But a candid Enquirer will easily see that the Case is far otherwise; instead of this so much murmur'd at Procrastination of *three Weeks*, or a *Month*, it will appear, that in *most* Instances

stances, not more than *seven Days*, and in *some*, not an Hour beyond the Time prescribed by the *old* Laws, for the ordinary Course of solemnizing a Marriage, is required by the *new*.——For Example, suppose a *Sailor* (and they are the People alleged to be more especially aggrieved by this Act) just landed this 26th Day of *January*, 1755, he immediately pays his Mistress a Visit, finds her willing, and they agree to be married with all possible Speed. If he is not rich enough to purchase a Licence, Banns are directed, the first Publication of which cannot be till the following *Sunday*, and they must be continued on the two succeeding *Sundays*, no Festival intervening, which (seeing every Fortnight does not furnish a Holy-Day) may also happen at many other Times of the Year. Three Weeks at least must expire from the Time of his coming on Shore, before he could be legally married, even 'ere the Laws had received the late Alteration: To comply with which, all that is required of him,

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is,

is, that he *forthwith* give the prescribed Notice to the Minister, of his Intention, &c. and the Publication of Banns will commence and conclude as early as if he had not been obliged to give such Notice. This Objection, manifestly calculated to inflame the very lowest of the People against their Governors, has been re-ecchoed from News-paper to News-paper, and propagated by every Channel Art or Industry could suggest: What Weight ought to be allowed it, let the Impartial temperately determine.

The other Clauses that have more particularly given Offence, are those which enjoin the *Consent* of *Parents*, or *Guardians*, before the Age of *twenty-one* Years; that annul Marriages for Want of this Consent, or which are not celebrated in the Face of the Church, and preceded by *Banns* or *Licence*; and that inflict *Transportation* on the *Minister* solemnizing Matrimony without a due Observance of those Preliminaries, or in any other Place than a Church,

Church, or public Chapel.— Well ! and have not most of these Things been either positively ordained (g), or plainly intended (h) long before ?

But says, a Reverend Divine, *quo jure* (i) ? Such Institutions, he insists, are repugnant to the Law of Nature, upon which all other Laws, ecclesiastical or civil, are founded, and to which they ought to be subservient. Thus argues this learned Author ; Marriage, according to the Law of Nature is “ THAT FAITH by which the MAN and “ WOMAN bind themselves *to each other*, to “ live together as Man and Wife : ” Which Definition *he tells us* is agreeable to GROTIUS and others. “ The Law of Nature, (he proceeds) prescribes no particular

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“ cular

(g) Vide supra, 20, & seq.

(h) Ibid. p. 22.

(i) Dr. Stebbing ; in a Pamphlet called, *An Enquiry into the Force and Operation of the annulling Clauses, in a late Act for the better preventing Clandestine Marriages, with Respect to Conscience.* p. 25.

“ cular Form in which this Contract shall
 “ be made ; but in what Words, and un-
 “ der what Circumstances soever it be
 “ made, and whether with Witnesses or
 “ without, the State of Marriage arises
 “ immediately upon it, binding the Con-
 “ sciences of both Parties, especially after
 “ Consummation (*k*).”

He further asserts, That every Individual capable of discerning and performing the Duties of Matrimony, hath an inherent natural Right to contract him or herself uncontrollable by parental or other Authority ; and that this Right is UNALIENABLE to or by *Society* ; which, though it may prescribe particular Forms for solemnizing or making public a Marriage, hath nothing to do with the Essence of the Contract, as it lies before God ; nor can any Nullity it may pronounce for a Neglect of those prescribed Forms, discharge *Conscience* from the Obligation entered into by such Contract :
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(*k*) *Enquiry, &c.* p. 5.

It is granted, that Society may deprive those who refuse or neglect to conform to its Appointments of every civil Privilege, but that no Law can alter the Nature of the Contract, so far as it concerns *Conscience*, which, the Right of contracting admitted, is compleat and perfect, by the mutual Assent of Parties. "For, continues
 " our Author, strip [Marriage] of all its
 " religious Rites and Ceremonies, and suppose the Contract made seriously and
 " deliberately, with Purpose and Intention, even in a *common Parlour*, still it
 " is the same Contract, and if it is made
 " by those who have a *Right* to make it,
 " it cannot be dissolved. If you say, that
 " a Man has *no Right* to marry except he
 " marries in the legal Form, it will be
 " saying (in Effect) that the Form gives
 " the Right; which is very absurd. The
 " Form does not *give*, but *supposes* the
 " Right, and only directs the Use of
 " it (1)."

Never-

(1) Ibid. p. 22.

Nevertheless, the Doctor is pleased to allow that the Laws of Society, “ in all “ Things *lawful* and *expedient*, are the “ Laws of God.” And that “ if two “ Persons, in *Contempt* of the Laws of So- “ ciety, whilst the legal Forms are OPEN “ to them, shall cohabit together, as Man “ and Wife, under a private Contract, it “ is an Offence to God, and *one* Species “ of that unlawful Commerce, which the “ Scripture calls *Fornication (m)*.” This may be thought a tolerable Concession from this Champion for the Superiority of the Law of Nature; had he not marred it by what he says a few Lines afterwards.— “ But if such Contracts, “ for Want of the legal Forms, will not “ justify Cohabitation as Man and Wife, no “ Man in his Senses will pretend to say, “ that they are therefore *null*. For the “ Contract receives its binding Force *not* “ from the Law, but from the *Consent* of “ Parties (n).”

Com-

(m) Ibid. p. 22.

(n) Ibid. p. 23.

Comfortable Doctrines these for brisk Lads and amorous Lasses ! A *reverend Casuist* tells them, that, since the Laws of the Land have been so oppressive, as to shut the Door, *for a-while*, against their indulging their wild Passions ; as soon as ever Nature stimulates, they have no Occasion to trouble themselves about the Church, or the Parson ; let them only take each other's Word, it is sufficient to satisfy *Conscience*, and their *simple* Agreement is a full Marriage in the *Sight of God*.

But if matrimonial Causes are to be tried only at the Bar of *Nature*, it will not be improper to take the Opinions of those who have more professedly studied *her* Laws ; to which Purpose we need not have Recourse to a better Authority than *Grotius* ; but then it will be necessary to let him speak for himself, not as the Doctor has represented him. *Marriage then*, according to this learned Author, *naturally is a Cohabitation of Male and Female, where-*
by

by the latter places herself in Subjection to, and under the Custody of, the former; and at the same Time the WOMAN binds HER FAITH to the Man (o). How does this agree with the Definition of Marriage ascribed by our Casuist to Grotius? Here is no reciprocal Binding of the Man and Woman to each other; the Obligation to Fidelity is imposed only on the Wife; and this, Grotius says, is ALL that NATURE seems to require for the Completion of Wedlock; or that the Divine Law appears to have exacted before the Propagation of the Gospel (p). The Reason for limiting this Obligation only to the Female Party is obvious: Men were not

(o) *Conjugium igitur naturaliter esse existimamus talem Cohabitationem Maris cum Fœmina, quæ Fœminam constituat quasi sub oculis et custodiâ Maris, Nam tale consortium et in mutis animantibus quibusdam videri est. In homine vero, qua animans est utens ratione, ad hoc accessit fides, qua se Fœmina Mari obstringit. Grotius de Jure Belli & Pacis, L. 2. C. 5. 8. 2.*

(p) *Nec aliud, ut conjugium subsistat, natura videtur requirere. Sed nec divina Lex amplius videtur exegisse ante Evangelii propagationem, ibid. 2. 5. 9. 1.*

not prohibited, by any Law, a Plurality of Wives; had an equally unlimited Commerce with *Men* been granted to *Women*, there must ever have been an Uncertainty and Confusion in their Offspring; wherefore it might be no more than expedient to oblige them by some such Restraint. But it may perhaps be asked, was there *no* Obligation on the *male* Side? *Grotius* (who is the rather referred to on this Occasion, as he seems to be a particular Favourite of our reverend Author) does not take Notice of any: Nevertheless, Reason may presume, that in lieu of this Complaisance and Submission from the Woman, she was entitled, at least, to Support and Protection from the Man. Moreover, this Contract (if such an Engagement ought to be called a Contract) was no longer binding than was agreeable to the Husband, who might when he pleased put away any of his Wives, nor was such dismissed Wife forbidden to marry again.—Such was the State of Marriage according to

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the *Law of Nature* (q); or, as Dr. *Stebbing* expresses it, *before civil Societies began* (r).

—Would any of our modern Ladies be fond of reverting to it?

It is possible this may be thought a Deviation from the Question, which our Doctor particularly insists on, *viz.* Had not every Able Individual, *naturally*, an unquestionable Right to enter into this Contract, be its Manner or Meaning what it will? Let it be granted; Limitations in this Respect were not so necessary, while Nature, meer simple Nature, did not acknowledge any Inequality of Persons, nor any Superiority in Property: Neither could many Inconveniences be apprehended from an Engagement dissoluble at Pleasure.

“ Some

(q) *Nunc quæ rata sint Jure Naturæ conjugia videamus, ibid. x. 1.*

(r) See a Dissertation on the Power of States, &c. by *Henry Stebbing*, D. D. CHANCELLOR of the Diocese of *Sarum*, &c. p. 1.

“ Some Kind of *Regiment*, (says the
 “ learned and judicious *Hooker*) the Law
 “ of *Nature* doth require, yet the Kinds
 “ thereof being many, Nature tieth not to
 “ any one, but leaveth the Choice as a Thing
 “ arbitrary (*f*).” The Institution of a pro-
 per *Regiment* was therefore the first Care of
 Society.— Societies were voluntarily en-
 tered into for the mutual Convenience and
 Protection of the respective Associators; who,
 when they engaged, may be presumed to
 have receded from, or have made *reciprocal*
Concessions of, their *original natural*
 Liberties to each other; whereby every In-
 dividual consented to subject his *Person, Pas-*
sions, and *Properties* to such Regulations
 as *were*, or *should be* thought most condu-
 cive to the Benefit of the whole Commu-
 nity: And to render these Regulations ob-
 ligatory, certain *Privileges* and *Punishments*
 were annexed to the careful Observance of,
 or wilful Disobedience to, the Rules pre-
 scribed by that Agreement. At the same
 I 2 Time,

(f) Ecclesiastical Politie, B. I. §. 10.

Time, that there might not be wanting a sufficient Authority to compel Obedience, some particular Persons were invested with a Power of executing those Ordinances, and of administering the Privileges and Punishments annexed to them. From hence may be derived the Origin of Civil Laws, and Civil Power (*t*).

The original Design of instituting Laws was to determine the Boundaries of *natural Liberty*: “ The Dignity of *Man*, (as *Puffendorf* justly observes) and his Excellency, above all the other Parts of the animal World, made it requisite, that his Actions should be squared by some Rule, without which no Order, no Decorum, no Beauty can be conceived (*u*).— The Corruption
“ tion

(*t*) Sed notandum est, primo homines, non Dei præcepto, sed *spon*te adductos experimento infirmitatis familiarum segregum adversus violentiam in *societatem civilem* coisse, unde *ortum* habet potestas civilis. *Grotius de Jure B. ac P. L. 1. C. 4. 7. 3.*

(*u*) *Puffendorf's Law of Nature. Kennet's Translation, B. 2. C. 1. §. 5.*

“ tion and Degeneracy of Mankind, (continues the same Author) (*w*), and their “ *Passions* made Restraints necessary.”

Consequently, by how much more impetuous and unruly, or by how much more inconvenient or destructive to the Decorum of Society, an unlimited Indulgence of *particular* Passions was found to be, by so much more it was expedient to restrain and circumscribe the Indulgence of those Passions.

The Appetites which inspire the Sexes with a mutual Propensity to each other, and which direct the Propagation of our Species, are altogether requisite for the Continuance of the human Race; wherefore, the free Exercise of them ought to be as little clogged as the general Interest of Society will permit. Nevertheless, as Experience had manifested the Irregularity and Impatience of these Appetites in a State of Nature, and that an indiscriminate

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(*w*) *Ibid.* §. 6.

Licence of them might be productive of Disorder and Confusion, it was judged conducive to the Service of the Community, to subject them to some Restrictions, and that public Authority should appear to give, as it were, a Sanction to the Gratification of these natural and necessary Desires: To this Purpose certain Rites and Ceremonies were appointed, the due Observance of which was deemed the distinguishing Characteristic of a legal Marriage, and which alone entitled the Persons so joined to the Privileges and Protection of the Community.

It doth not appear that the earliest Societies made any great Deviation, with Respect to Marriages, from what *Grotius* supposes to have been dictated by the Law of Nature; seeing Polygamy and Divorces (x) continued to be as freely and generally admitted,

(x) *Plerasque gentes certum est antiquitus ut diversiorum libertate, ita plurium sceminarum conjugio usas.*
Grotius de Jure B. ac P. L. 2. C. 5. 9. 4.

mitted, as before. But as Mankind became more civilized, their Manners better polished, and especially, after the Introduction of a Diversity of religious Systems, the Prerogatives of Nature were much further abridged, in many Instances, and more particular in what related to Marriages : The Number of Wives were specifically limited ; Persons within certain Degrees of Affinity, of different Ranks, Countries, or religious Principles, and those under a prescribed Age, were prohibited Matrimony ; upon which also were imposed several other disabling Conditions, equally unknown to the simple Law of Nature. Engagements entered into contrary to the above specified Prohibitions, were declared void ; and an exact Observance of many additional Ceremonies was required, for the actual Confirmation of the Contract ; nor was this Contract, if made agreeable to Prescription, dissoluble, but upon clear Evidence of some notorious Infraction of it by one of the Parties.

Thus

Thus far the Laws of Society have presumed to over-rule and circumscribe the Law of Nature, notwithstanding the supposed Supremacy of the latter, by Dr. *Stebbing*, who objects, that seeing “ there “ is no Point upon which States have made “ more different or contradictory Laws, “ than this of Marriage, their Difference “ and Contradiction is sufficient *absolutely* to “ exclude them from a Right of Decision “ in the present Case(y).” But may not this Argument be extended much further than our Objector designed, or would willingly approve of? Should a professed Infidel or Atheist say, that, because different Communities of Christians have and do disagree in their Opinions relating to some particular Doctrines, it is sufficient *absolutely* to exclude all Christians from a Right of Decision in Matters of Religion ; would our reverend Doctor think such a Method of Reasoning conclusive? Surely, no! The Answer is obvious ; whatever Disagreement of Sentiments

(y) *Dissertation on the Power of States, &c.* p. 26.

ments there may be in Respect to certain Tenets or Ceremonies, in *Essentials* Christians of *all* Denominations concur, especially in asserting the unexceptionable Truth of Christianity. So with regard to *States*, though, in forming their religious or æconomical Institutions, they may have been more immediately directed to vary them according to the Genius and Temper of respective Communities; yet in this they all concurred, that Religion and Laws were necessary for the Preservation of Order; they were also unanimous in assuming and exercising a Power over *Marriage Contracts*, and fixing the Terms of their Validity; nor did they make any Scruple of denying *civil* Protection to such Engagements as were repugnant to *civil* Institutions.

There is, perhaps, no one Point, in which the Generality of Nations has more unanimously agreed, than in *bastardizing* Children, born of Parents who have not previously complied with the prescribed

K Forms

Forms of Wedlock. *Nature* is an utter Stranger to any such Distinction; nor is there any Law that carries with it a greater Appearance of Oppression and Injustice: Every Child has, both according to *Nature* and *Conscience*, a positive Right to Protection and Support from its Parents, and even to Inheritance after their Death, however its Birth may chance to be circumstanced; but in this Case the unoffending Infant is punished for the Indiscretion of its Father and Mother; it is deprived of its hereditary Right, *and stands only in the Rank of a Stranger*. Contrary to natural Equity as this Law may at first Sight seem, whereby every Man submitted the Exercise of his most ungovernable Passion to the Prescriptions of Society, and consented (to use our learned Casuist's Words) "that a *Disherison*" "should pass against his whole Issue, and" "that himself with the Partner of his" "Bed should be exposed to Shame and Punishment (z)," in Case of Disobedience; yet

(z) Ibid. p. 32.

yet the Peace of Society required it, and every Member of the Community is presumed to have consented to it. In like Manner every Man by his very entering into Society may be supposed to give his Consent to all its Ordinances.

But, says our Author, there are some natural Rights, that no Man can renounce, and which no Law of Society can reverse; particularly, the Minor cannot give up his *original inherent* Right of Marriage, nor any Person his Liberty of worshipping God according to his own Judgment and Conscience (a). Let these be admitted: It cannot but give every *candid* Christian a sensible Pleasure to find the Doctor in so good a Humour; for there was a Time, when he thought it necessary that the latter ought not to be granted without its being *handsomely* paid for; also, when he appeared as fond of *extending* the civil

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Power

(a) Ibid. *passim*.

Power over Religion (*b*), as he now seems willing to *abridge* it in regard to *Marriages*.

With respect to the former, the Law, that has given Occasion to our Doctor's, as well as this Publication, neither *takes away*, nor *suspends*, the Minor's *Right* to Matrimony; it only adds a *Condition* former Laws had approved, which being observed, he is still at Liberty to marry as early as before. The Condition is *only*, that Minors will be pleased to admit of the Consent of their Parents or Guardians. It is objected to this Injunction, that the Law of Nature does not *expressly* require it, nor does the Law of God *positively* command it. Nevertheless, both one and the other directly recommend it; and Reason seems to give Parents at least a *negative* Voice in the matrimonial Contracts of their Children:

(*b*) See Dr. Stebbing's *Essay on civil Government considered*, as it stands related to Religion. Fol. Edit. 1737. *Passim*.

dren: For, among the Duties naturally owing by the latter to the former, are Support and Succour under Accidents or Infirmities, and Bishop *Fleetwood* observes, that *the civil Laws of all Nations agree in exacting and commanding the Relief and Sustainance of Parents* (c). If therefore, a Child is about to engage in so imprudent a Marriage, as will probably disable him from discharging this Obligation, when it shall be required, the Parent has a personal Interest in prohibiting the Contract; as much as a Creditor would have in preventing his Debtor from idly engaging in such Measures as were likely to incapacitate him from the Payment of his Debts.—In Relation to what the Law of God appoints, let the last-mentioned pious Prelate declare: It is, says he, *expresly* commanded, that *Children shall honour and obey their Parents;*

(c) *Relative Duties*, p. 51. The same Author considers this Duty as positively enjoined in Scripture, from *Matthew* 15. 4. and *Mark* 7. 12. *ibid.* 49.

rents; “ and it will be hard to reconcile
 “ marrying against Consent, with honour-
 “ ing the Parents, or marrying against
 “ Command, with obeying them (*d*).

But suppose all granted that our Casuist asks: Let it be allowed that neither God nor *Nature* have given Parents a Power to annul, for Want of their Consent, the Marriage of a Child, otherwise qualified. The Law, at present in Question has not given them any such Power: But that Law by *Virtue* of the *Authority* it derives from the *State*, declares, the Marriage of every Minor not accompanied with that Condition, *absolutely null and void to all Intents and Purposes whatsoever*; and it does the same by Marriages destitute of any other legal Condition. As the Privileges that accrue to Marriage are derived *only* from the Laws of Society, to say the State cannot limit those Privileges to certain Conditions, is allowing the whole Community,

(*d*) Ibid. p. 32.

munity, as a Body, less Power in the Distribution of its Favours, than every separate Member is presumed to have over those peculiar to himself.

To look somewhat further into this Matter, it may not be amiss, as Dr. *Stebbing* says of *Puffendorf*, to call the Doctor back to his own Principles (*e*). On a former Occasion this Gentleman admitted, what scarce any Body will contradict, that *the Business of the Magistrate being to take Care of the Public civil Good, he must have to do with every Thing in which the Public civil Good is concerned, whether it affects it directly or indirectly* (*f*). The Question therefore in this Case would be, *whether the Public civil Good be concerned in the MARRIAGE of the Subject?* But will such a Question allow of Controversy? Seeing it evidently was the very End and Purpose of entering into Society to promote the Interest

(*e*) *Dissertation on the Power of States, &c.* p. 30.

(*f*) *Essay on Civil Government*, p. 23.

Interest and Happiness of Individuals, to make them mutually serviceable to each other, and, as far as possible, useful to the whole as a Commonwealth.

The great Importance of *Marriage* to answer all these Ends, and consequently to advance the *Public Civil Good*, renders it an Object necessarily commanding the strictest Attention of the State. One imprudent Match by bringing, as our own Laws express it (*g*), *extreme, continual Heaviness of all Friends*, may deprive the Commonwealth of the *present* Services of several, perhaps, its most useful Members, without affording a probable Expectation of any *future* Benefit; for indiscreet Unions seldom produce very good Citizens (*h*).

“ Love, (says *Puffendorf*) is a friendly
 “ Motion to Mankind; yet this is so wisely
 “ to be managed and moderated by Reason,
 “ son,

(*g*) Vide supra, p. 34.

(*h*) Vide supra, p. 7.

" son, that it does not procure unworthy
 " Fuel to its Flame; that it does not *hin-*
 " *der other Duties*, nor degenerate into
 " *Disquiet* or *Disease* (i)." And in ano-
 " ther Place the same Author observes,
 " that in fixing the *Occasion* of Matrimony,
 " we are not to rest in the *Fitness* of *Age*
 " and *Ability*, but are likewise to suppose,
 " that the Match offered to us is answer-
 " able to our *Birth* and *Condition*, and that
 " we have competent Wealth to maintain,
 " and competent Prudence to govern a
 " Family.—Therefore it is not only unne-
 " cessary, but senseless and ridiculous, that
 " those *young Fools* should run a Marriage-
 " hunting, who have neither Means nor
 " Wit to keep a Family from starving, and
 " who at the best are only able to stock a
 " Nation with a Succession of Beggars (k).

The Observance of these Requisites, in Matrimony having been generally deemed

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(i) *Law of Nature*, &c. B. 2. C. 4. § 12.

(k) *Ibid.* B 6. C. 1. § 8.

necessary to the *Public Civil Good*, and the Barrier of Reason having been found too weak to restrain the Passions from *binding other civil Duties*; the Magistrate, or Legislature (in such a Constitution as ours) have not only a Right, but it is their indispensable Duty, to appoint and enforce such Regulations as the *Public Civil Good* shall or may require.

In a Part of his Works before referred to, Dr. *Stebbing* insists, that ALL *Rights* natural or not natural, are limitable by the *supreme Power*, for Reasons which concern the *Good of Society* (1): Agreed! Why then may not the State limit the Minor's alledged natural Right of Marriage? The Doctor does not altogether deny the Legislature this Power; but then he prescribes to them, so far shall ye go, and no farther: Take his own Words: "If the Law should say, "that no *Woman* shall marry till she is "fourteen, nor any *Man* till he is sixteen, "it

(1) *Essay concerning Civil Government*, &c. p. 82.

"it would be a very safe and reasonable
 "Law (*m*)."
 Hear also Bishop Fleet-
 wood's Opinion of very nearly the same
 Periods in Life. "Those are *not*, he
 "tells us, the Years of Consideration and
 "Discretion: The Light of Reason does
 "but *then* begin to shine forth: They
 "[Children] have commonly *then* just Wit
 "enough to think they have more Under-
 "standing than they have, to be conceited,
 "confident, and easily to be imposed upon
 "by the gay Appearances, and pompous
 "Snares that are laid for them (*n*)."
 It does not require a very extensive Know-
 ledge of human Nature to be convinced of
 the Truth of this worthy Prelate's Obser-
 vation. Let then the candid and disin-
 terested Reader decide, whether it is fitting
 that the *absolute* Determination of an Af-
 fair, so important to their own Happiness,
 to the Peace of all their Friends, and to
 their Connections with the Public, should

bluod?

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be

(*m*) *Dissertation on the Power of States, &c.* p. 5.

(*n*) *Relative Duties*, p. 28.

be left *entirely* to the Discretion of Understandings so imperfect and uninformed.

It has already been remarked that our Casuist is complaisant enough to allow the civil Authority Leave to fix the Age when Persons shall be joined in Marriage, not exceeding the Periods he has himself assigned. How can this Concession, limited as it is, be reconciled to the Principle, upon which he founds his Supposition of the Minor's Right to Marriage being *unalienable*. Will he say that a Boy before sixteen, or a Girl before fourteen cannot want the *Gift of Continency* (o)? This Appetite has been seen to shew itself in some much earlier, as well as to remain with some very late, even after the Ability to indulge it had ceased. Wherefore the Doctor's Argument is just as strong against his own Limitation as any other that has or may be proposed.

Should

(o) So Dr. Stebbing expresses himself with Relation to Puffendorf in his *Dissertation*, &c. p. 44.

Should Experience and Observation demonstrate in any Community, that from a too early Use of the conjugal Bed the Subjects were generally enfeebled, their Bodies enervated, and their Understandings impaired; insomuch, that instead of being useful they became burthensome to the State: Should it also be observed, that the Issue proceeding from such juvenile Marriages were for the most Part poor, weak, short-lived Beings, unable to contribute to the Assistance or Defence of the Commonwealth; in such a Case (which, it is probable, few Physiologists will judge either impossible or unnatural) what ought the civil Authority to do? Because MASTER or MISS may be inclined to think themselves not endued with the *Gift of Continency*, must they be allowed to engage in a State like to be no less injurious to themselves than the Public? Is it proper that Matrimony should be made Use of as a Play-thing to quiet unruly Children? Or that it should be permitted to those who
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are only capable of defeating the Ends of this holy Institution? Surely, no: The Voice of Nature, of Reason, and of Religion concur in disapproving such a Permission; and the present as well as future Well-being of Society positively demand the Interposition of the civil Authority to prescribe Bounds to the Exercise of a Liberty, which, if abused, may be so destructive to the *Public Civil Good*. Nor is the popular Maxim, that the Wealth and Power of a Kingdom consists in the *Number* of its People, (a Maxim which has been repeatedly urged on this Occasion) to be understood without some Restriction: What appears to have been hereby intended, is, the *Number* of USEFUL People; of such only who by their Industry and Labour may contribute to enrich and aggrandize, or whose Strength and Fortitude enable them to protect and vindicate the State: As for the idle, dissolute, and effeminate, those who have neither Will nor Ability to render it any Services, such have always been esteemed

esteemed a Grievance in, and a Burthen upon every well-governed Common-wealth.

That civil States have always been presumed possessed of, and that they have really exercised a Power of determining what should or should not be admitted *lawful* Marriages, and consequently entitled to public Protection, very few, if any, will be hardy enough to deny. To shew not only the *Expedience*, but even the *Necessity* of investing civil Authority with such a Power was the principal Design of the foregoing Pages: Nor can our reverend Casuist's Subtleties confute the Truth of *Puffendorf's* Assertion; that "in general this
 " is certain, as the Laws of a particular
 " Country may pronounce a Contract in-
 " valid, because defective either in Form,
 " or because transacted between Persons
 " to whom such particular Agreements were
 " prohibited; they may in like Manner
 " suspend the Validity of a Marriage had
 " without the Consent of Parents, so that
 " if

“ if destitute of this *necessary* Condition, it
 “ shall pass in civil Estimation for Null and
 “ Void (p).” — And with Respect to the
 Deference alledged due to the Law of
 Nature, the same Author judiciously ob-
 serves, that “ although the Law of Na-
 “ ture be a Stranger to these Formalities
 “ [or Conditions] yet inasmuch as it com-
 “ mands *all* Subjects to obey the Ordi-
 “ nances of the Government under which
 “ they live, it would be idle and ridiculous
 “ for such Persons as have not the Power
 “ of making or reversing Civil Laws to
 “ plead the Indifference of the *natural*
 “ Law in the present Case (q).” How far
 the Law may reach the *Vinculum Matri-*
monii as it lies in *Conscience* (r), even Dr.
Stebbing may be permitted to determine;
 seeing he has himself agreed, that the
Right of supporting civil Society cannot be
suspended, or taken away by any Scruples of
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(p) *Law of Nature*, B. 6. C. 2. § 14.

(q) *Ibid.* C. 1. § 35. in Conclusion.

(r) *Dissertation*, &c. p. 48.

Conscience real or pretended (*f*). A stronger Instance of the Fallibility of human Judgment can hardly be produced than in the many Contradictions this truly learned Writer has been guilty of in treating the present Subject. Is it not somewhat surprising to see the applauded Combatant of Popery pleading in Behalf of one of its most slavish as well as most favourite Doctrines, by agreeing with them to exclude the *secular* Power from any Authority over Matrimony (*t*)? Is it not equally whimsical to see the same Author insisting at one Time on the Inefficacy of *all* Rites or Ceremonies with respect to the *Validity* of the Marriage Contract (*u*), and soon afterwards approving as *undoubtedly just* the Nullity, declared by the *secular* Power, against Marriages solemnized in illegal Places, or without Banns or Licence (*w*)? And after such

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(*f*) *Essay on Civil Government*, p. 74.

(*t*) *Enquiry*, &c. *passim*.

(*u*) *Ibid*.

(*w*) *Dissertation*, &c. *Preface*, p. 12.

a Concession, is it not as extraordinary to find him contending for an unlimited Right of Marriage to Minors, by a Series of Arguments which may, if they prove any Thing, serve to refute the Concession he has just before made (x)? How are these Inconsistencies, in a Gentleman whose Writings have generally been thought an Honour to the Causes he has engaged in, to be accounted for, unless his own Reflection upon Mr. *Locke* may be applied to himself, *That great Men do not always reason like themselves* (y)?

But to return from this Digression: The immediate Subject of Enquiry is, whether the Injunction in the late Act of Parliament, that *Minors*, under the Age of *twenty-one* Years, shall not marry *without the Consent of Parents or Guardians*, is an unjust or an unreasonable Condition; or the Nullity of Contracts made without such

(x) *Ibid. passim.*

(y) *Essay, &c. p. 15.*

such Consent, more than an adequate Punishment for the wilful Disobedience of that Injunction? Had this Law positively ordained, that no Persons should marry before the Age of *twenty-one*, it might, perhaps justly, have been thought a Hardship; or had it given to Parents a Power to *compel* their Children to marry *contrary* to their Inclinations, it would, certainly, have been an unjust Law; but neither of these can be pretended to be the present Case. That Children should be taught a blind Obedience to every Impulse of their irregular Passions, by permitting them to run headlong into Matrimony, as soon as, or whenever, Inclination may prompt, will, it is presumed, be deemed as little consistent with good Policy, or the Welfare of Society, as it would be to impose unreasonable Restraints upon them after they were *sufficiently* qualified to fulfil *all* Duties required by that solemn and momentous Engagement. By *sufficient* Qualifications is here intended, such a Maturity of the

intellectual as well *corporal* Faculties in the contracting Parties, as may not only enable them to *encrease* and *multiply*, but also endue them with Capacity enough to render their Descendants not less useful Citizens than good Christians. Even Dr. *Stebbing* supposes, “ such a Ripeness of Understanding “ to be necessary, as competently well qualifies Persons to transact common Affairs, “ to *buy*, or to *sell*, or to make a Bargain ; “ and such a Sense of Right and Wrong, “ as will enable them to know when they “ do ill, when they *cheat*, or when they “ *break their Faith*, or the like (z).” But it is possible this Definition may be thought rather too indefinite ; for, according to the former Part of it, the Minor ought not to be at Liberty to marry till he is *twenty-one* Years of Age, seeing he is presumed by Law before not competently qualified to *buy*, *sell*, or *bargain* ; and if meerly being able to distinguish Good and Evil, shall be allowed to constitute a Fitness for Wedlock,

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(z) *Dissertation on the Power of States*, &c. p. 9.

the Child of twelve Years old would often have an equal Right to that Privilege as the Minor of *twenty*. However, not to dwell on Niceties, that Maturity of Judgment is requisite to the Validity of connubial, as well as other Engagements seems to be generally admitted; *when* this Ripeness of Understanding comes, is difficult to be determined with any Degree of Certainty, seeing in some it is manifest much sooner than in others; yet we are not quite destitute of Rules to direct our Judgment in this arduous Case. Let *Grotius* and *Puffendorf* be our Guides, “ In settling this
 “ Point, *viz.* how long Children continue
 “ under such a Weakness of Reason as
 “ renders them incapable of contracting
 “ Obligations, *Regard* (says the latter) is to
 “ be had to the *daily Actions* and Pro-
 “ ceedings of the *Persons*, from whence
 “ the best Conjectures are to be made
 “ about this Understanding; or commonly
 “ we have Recourse to the positive Laws
 “ of

“ of their Country (a).” With this Author *Grotius* (b) also perfectly agrees. Those Persons therefore who have the most frequent Opportunities of observing and considering the Conduct of Children, are the most proper Judges of their intellectual Faculties. Hence appears the Candour, Moderation, and Reasonableness of this Law, which, instead of limiting any precise Time, *till when* Minors shall be prohibited Matrimony, has only lodged a discretionary Power of approving or disapproving in Parents or Guardians, who, by their natural Connections must be supposed to be furnished with continual Occasions of nicely examining the Actions of their Children, or Wards, and consequently of determining the Fitness or Unfitness of their Qualifications with respect to Marriage.

As

(a) *Law of Nature*, &c. B. 3. C. 6. § 5.

(b) Quando autem puer ratione uti incipiat non potest certo definiri: Sed ex *quotidianis actibus*, aut etiam ex eo quod communitur in quaque regione accidit desumendum est. *De Jure Belli*, L. 2. C. 9. § 2.

As to the Question, “ who *has*, or who “ *has not* the Gift of *Continency* (c)?” To fix any certain *Criterion* whereby to distinguish when this Plea is *real* or imaginary, may be attended with as much Difficulty as to discern the Proportion of Reason Children may be furnished with at different Ages ; seeing Constitutions vary as much as Intellects : Nevertheless, this is certain, that the *ruling* Passion is to be discovered from a minute Observation of the general Tenor of their Behaviour as well in younger as in elder Persons ; wherefore, the same Expedient may, not unreasonably, be admitted in this as in the former Case ; every Parent has been a Child, and even for that Reason may be supposed best capable of judging what Allowances ought to be made to this Pretension.

After what has been offered in order to vindicate the Propriety of the Law's insisting

(c) *Stebbing's Dissertation*, p. 44.

ing on the Consent of Parents, &c. as a requisite Condition to the Marriage of *Minors*, it is presumed little will be requisite to shew the Equity of annulling Marriages destitute of this Condition. All Laws acquire their Force from the Penalties they inflict, therefore the Penalties imposed should be such as are most likely to command Respect and Obedience to the Laws: How far every Prohibition implies a Nullity, Casuists have not agreed, nor is that Point necessary to be discussed here; it is enough for the present Purpose, that they admit the Law has Power to annul some Kinds of Agreement; which *Grotius* (*d*) tacitly allows, especially, where it may be for the public Good. In the present Case, Experience has evinced the Inefficacy of all
other

(*d*) Sed sciendum simul est, non quod vetitum est fieri lege humana, si fiat irritum quoque esse, nisi et hoc lex addiderit aut significaverit. *De Jure Belli*, L. 2. C. 5. 14. 4.—Lex Civilis utilitatis causa multa irrita solet facere quæ naturaliter obligarent; . . . Non pauca quæ a *Minoribus* aut filiis familiarum fiunt. *Ibid.* C. 9. 8. 3.

other Expedients either to prevent Clandestine Marriages, or to hinder the Seduction of Minors; nor does it require any extraordinary Share of Sagacity to discover the Reason why it has been so. The Presumption that Marriages however, or whenever solemnized, were indissoluble; or as the ingenious *French* Author before-quoted (*e*) terms it, that the YES, under what Circumstances soever it was pronounced, was *always* to be taken in the *strictest* Sense of the Letter, has not only been the Cause of, but the Temptation to these iniquitous, illegal Practices. *Congreve* (than whom few of our dramatic Poets seem better acquainted with the human Passions) appears thoroughly convinced of the Truth of this Observation, when having introduced two Jilts conspiring to ensnare a young Fellow supposed to be entitled to a Fortune, but out of his Senses, he makes the one say to the other, " If in

N

" one

(*e*) Vide *supra*, p. 7.

“ one of his *mad* Fits he [an imagined
 “ Accomplice] will get you married toge-
 “ ther, and put to Bed together, after
 “ Consummation, Girl, *there's no revoking*
 “ *it (f).*” Upon the same Principles have
 most of our irregular Matches been formed.
 A more just Remark is hardly to be met
 with in either of Dr. *Stebbing's* two Pam-
 phlets upon this Subject, than where he
 takes Notice, “ that, ordinarily, the Poor
 “ are seen marrying among the Poor, the
 “ middle Rank among the middle Rank,
 “ and the Rich and the Noble among the
 “ Rich and the Noble (g).” Nothing is
 more true; *Like* naturally inclines to *Like*,
 nor is it probable that *John* or *Abigail*, who
 might, perhaps, have been very happy
 with each other, would have thought it
 worth their while, the former to attempt
 seducing his young Mistress, or the latter
 her young Master, but from a Knowledge
 that the Marriage when once accomplished,
 was

(f) *Love for Love*, Act 4. Scene 14.

(g) *Dissertation on the Power of States*, &c. p. 47.

was for ever afterwards *irrevocable*. As this was evidently the Cause of offending, what other so effectual a Remedy could Reason or Prudence suggest as that of removing the Temptation to the Offence ?

The People have been industriously taught to look upon this Law in a very false and partial Light, whereby their Prejudices against it have been greatly aggravated. They have been told that it was calculated to serve no other Purpose, and that it could answer no other End than to preserve and accumulate large Estates in private Families.—The Law itself neither says, nor implies any such Thing; as clandestine Marriages had been found equally mischievous to all Ranks, the Restraint was, as it ought to be, extended to all: Every Parent, let his Condition of Life be what it will, is imagined to have an Interest in the Welfare of his Children; and suppose a Minor, the Son of the meanest Artizan, inadvertently betrayed into Matrimony with

a common Prostitute (a Case that has too frequently happened) would not the Father think himself in Duty bound to bless the Legislature for annulling such a Marriage, as, in its End would probably have brought his grey Hairs with Sorrow to the Grave? Ought not the imprudent Youth be thankful for the Dissolution of an Union, which, from its Consequences, might have rendered his whole Life miserable? And lastly, let Reason or Conscience determine, whether such a Contract is *properly* entitled to *civil* Protection? With respect to the fair Sex, who are more frequently exposed to the Arts of Seduction, and who are generally the most susceptible of Shame, their being assured, that a yielding to Addressees, *without the Consent of Parents*, will be attended with an equal Loss of Reputation, as if they should comply with the Solicitations of a passionate Lover *without the Ceremonies of the Church*, seems to be the most adequate Means of effectually frustrating the
in-

infamous Designs of the faithless Libertine
or needy Fortune-hunter,

But it has been asked, are these annull-
ing Clauses compatible with the Gospel
Precepts, which say, *What God hath joined
together let not Man put asunder* (b). In An-
swer to which it may not be improper to
enquire, of whom may it be truly judged
that *God hath joined them together*? The
Liturgy of the Church of *England* clearly
resolves this Problem ; it is therein declared,
“ that Matrimony is *not* by *any* to be en-
“ terprized nor taken in Hand, *unadvif-*
“ *edly, lightly, or wantonly*, to satisfy
“ Mens *carnal* Lusts and Appetites, like
“ brute Beasts, that have no Understand-
“ ing ; *but reverently, discreetly, advisedly,*
“ *soberly, and in the Fear of God*, duly
“ considering the *Causes* for which Matri-
“ mony was ordained (i).” After so ex-
plicit

(b) *Matthew*, xix. 6.

(i) See the *Office for Matrimony* in the *Common-
Prayer-Book*.

explicit and judicious a Distinction by so approved Authority, whereby is precisely pointed out, *as well* who are not, *as* who are to be presumed joined together in this *holy* and *honourable* Estate by God, it cannot but appear somewhat surprising to a serious Mind, to perceive that most of the Arguments urged against this Law, have been deduced from the *carnal* Duties of Wedlock, without the least Regard being had to its other, by far more sacred Obligations.

Agreeable to the Doctrines and Discipline of the Church, the Marriages intended by this Law to be restrained are such as may be justly supposed to have been entered into *unadvisedly, lightly, or wantonly*, of which Kind for the most Part are *unequal* Matches of all Sorts, whether the *Disparity* relates to Birth, Condition, Fortune, or any other Particular, whereby either of the contracting Parties may, consequently, be subjected to public Censure, or private Inconveniences. A mutual *well-grounded* Esteem and Affection

Affection for each other is the only firm Basis of conjugal Happiness; but these are very seldom, if ever, considered in hasty, irregular Marriages; which on the contrary being generally governed by mere *sensual* or *lucrative* Views, cannot be said to be taken in Hand *reverently, discreetly, advisedly, soberly, or in the Fear of God*; and it would therefore be an Indignity to the *Almighty* to presume Persons marrying to serve only such unworthy Purposes, either are, or ought to be, under the divine *Binding* Sanction.

But further; all civil Laws which are made for the Good of Society, and are not contrary to the Law of Nature, are approved of by God, and, in this Sense, are his Laws. And Obedience to such Laws is Obedience to the Will of God.— If the late Act for the better preventing Clandestine Marriages is not, on the one Hand, contrary to the Law of Nature, but on the other Hand, tends to preserve the Peace
and

and good Order of Society (which it has been the professed Endeavour of this Undertaking to prove) it must be agreeable to the Will of God: The annulling therefore Marriages entered into contrary to the Injunctions of this Act is not putting asunder those whom God has put together, but those whom God has *not* put together (*k*); and so far from being contradictory to the Gospel Precept, that, to use the Words of an eminent and learned Divine, “ it is only “ breaking an insolent and disorderly Confederacy in Licentiousness, where *God’s* “ *Sanction*, and the Magistrates Authority, “ are equally insulted (*l*).”

The Arguments against this Bill, which appear more immediately deserving Attention, have already been considered; but
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(*k*) This Argument is taken from Dr. Gally’s *Considerations on clandestine Marriages*. Second Edition, p. 124. and given almost in the Doctor’s Words.

(*l*) Dr. Warburton’s Sermon on the Nature of the *Marriage Union*.

as *popular* Prejudice has raised, other, merely *popular*, Objections against it, to take some Notice of them may not be amiss.—It has been urged particularly by a modern *Novel-writer*, that Religion is brought into Contempt from the Penalty inflicted by this Act on the *Minister* celebrating Marriage contrary to its Injunctions ; and that the Seducer was the more proper Object of Punishment.—That the Seducer merits Punishment must be admitted, but then it ought to be remembered that without the Instrumentality of the Minister the Seduction could not have taken Place. He therefore was an *equally* proper Object of Punishment. Pecuniary Penalties had been found by long Experience ineffectual ; wherefore a Punishment that would carry with it more Terror became necessary ; nor was the Execution of Parson *Paul* for Rebellion, or that *Kinnerly* stood on the Pillory for Forgery, ever deemed to reflect any Discredit on Religion, or the Clergy in general ; and with respect to the Plea

how far Poverty may induce or compel a Minister of the Church to a wilful Violation of the Laws of Society every Offender has as good a Right to make use of it.

A second Objection is, that hereby the younger Sons of good Families are precluded from advancing their Fortunes by Marriage.— Fortune-making does not appear to have been one of the Causes for which Matrimony was ordained; and those who marry merely with that Design, it may be feared will make very uncomfortable Partners. Besides, Society in the Institution of its Laws generally consults what may be most conducive to the Welfare of the Public, rather than the private Advantage of particular Individuals; and however disagreeable it may seem to the latter, the former may, possibly, be greatly benefited by the Obstacles this Law throws in the Way of young Gentlemen: This *easy* but *mean* Way of making a Fortune being put out

out of their Reach, it may direct them to more laudable Pursuits ; it may animate them with a Spirit of Industry and Emulation, whereby they may be led to employ the Talents, God has blessed them with, to Purposes worthy of themselves, and useful to their Country ; till they are allowed to deserve any Fortune, after which they may think fit to aspire.

Thirdly, It is urged, that the not permitting young Folks to marry whom they like may prevail on them to marry, for the Sake of Freedom, such as they do not like, from whence may proceed Desertion, Adultery, &c. &c.——How ingenious are these Objectors in prejudging what they presume, *may be*, without looking, in the least back, on what *has been* : Let them turn their Eyes to the greatest Part of the *unadvised* Matches, that have been transacted within these few Years in *Great-Britain* ; and it will, for the most Part, be seen, that the Husband who married only for the Sake of Fortune, being once possessed of that,

no longer thinks it incumbent on him to counterfeit the Lover; and however sincere or violent the Wife's Passion was at first, his Indifference (to which is sometimes added Ill-treatment) by degrees renders her more careless; Sober Reflection begins to take Place; she looks with Envy at the Rank from whence she is fallen; she hates the unworthy Husband who was the Cause of it, and the only Comfort she finds is in Revenge, which she endeavours to obtain from the Pursuit of lawless Pleasures. Where the Disadvantage happens on the Man's Side, the Effects are much the same, only that they are, for the most Part, sooner visible. As the Gratification of his Passion was the immediate Motive to his Marriage, that being once satiated, Coolness succeeds; Reason exerts itself and places his Error in the strongest Light; he blames himself and sees with Contempt and Aversion the Object that occasioned his Imprudence. While the Lady unexpectedly elevated to a Station of Life to which
 she

she is unequal, and which therefore is uneasy to her, endeavours to find that Satisfaction among her former Companions, the *Superiority* and *Negligence* of her Husband deny her. From hence have Adulteries been multiplied; was it not high Time some Endeavours should be used to prevent them?

Fourthly, It has been argued, that notwithstanding the Inconveniences and Disadvantages that may attend private Families from unequal Marriages, yet the Public may be benefited by them inasmuch as they occasion a more general Diffipation, or, as some term it, a more equal Distribution of Property. — By a Parity of Reason, Riot, Luxury, and Prodigality may be defended as national Virtues, seeing *what one Family loses [or squanders] another gets, who may be as useful Members of Society (m)*. The Highwayman may with equal Justice avail him-

(m) *Stebbing's Dissertation*, p. 37.

himself of this Argument; for he may, strictly speaking, be said to contribute to a Dissipation of Property; nor, the Consequences of both being duly considered, will the Man, who, in order to supply his Necessities or Extravagances, forcibly takes from another his Purse, appear a greater Enemy to the Peace of the Community, than the Person, who, by the Seduction of a Child intrudes himself, with the same Views, into the Estate of a Parent, contrary to his Inclinations. But if ever it should happen, which God forbid, and which indeed there is no Room to apprehend, that *Great-Britain* must be obliged for its public Happiness to the private Vices of its Inhabitants; let the Laws against excessive Gaming be repealed, and a new one made for its better Encouragement: Such a Law would not, upon these Principles, be less defensible, nor more pernicious to social or civil Order and Decorum, than the giving any Countenance to clandestine Marriages.

Fifthly,

Fifthly, Much has been said about the Obstinacy, Pride, and Avarice of old Age⁽ⁿ⁾, and of the Cruelty, Cautiousness, and Timidity of some Parents^(o), in order to shew the Unfitness of enlarging their Power; to these may be opposed the Inconstancy, Indiscretion, and Temerity of Youth in general; and the Perverseness, Audacity, and Wilfulness of some Children; which of these are most common, and which ought most to be restrained in a well-governed Society, let Experience determine. But, in Reality, the Premises are not strictly true, the Passions here ascribed to old Age are not such as necessarily result from a Length of Years: Whoever will give themselves the Trouble to look carefully into the Actions and Behaviour of Mankind, will, for the most Part, perceive, that the same Dispositions which influenced their Conduct in the younger Part of Life, are particularly discernible
in

(n) *The Marriage Act*, a Novel, Vol. II. p. 311.

(o) *Stebbing's Enquiry*, p. 26.

in more advanced Stages. For Instance, the same *designing, mercenary* Principles that raised *James Barter* (p) from the mean *Errand-Boy* to the opulent *Merchant*, are represented equally prevalent as well in his *earlier* as his *later* Days: While Sincerity, Benevolence and Generosity alike distinguished *All-worthy* (q) in the Autumn and the *Spring* of Life. To judge charitably it may be presumed, that there are more of the latter than of the former Character; and if the natural Effects of parental Tenderness are properly considered, it will appear that Children can have little, indeed, very little, to fear on that Head: For, as that pious Prelate (to whose Authority Recourse has been had more than once on this Subject) observes, “ the Affections of Parents are generally so strong, and their “ Intentions so good towards their Children,

(p) The Hero of the afore-mentioned Novel, once called the *Marriage Act*.

(q) A principal Character in the late Mr. *Fielding's* *Tom Jones*.

“dren, that the Presumption of *Right* is “generally on their Side (*r*).” Besides which, as a further Security to Minors against the *possible* Incapacity, Unreasonableness, or Injustice of Guardians, the Law has provided a Remedy, by permitting to such as should think themselves aggrieved an Appeal to the Court of Chancery.

Sixthly, This very Remedy has furnished Matter for not a few Objections, Objections as indecent as they are weak. That some Provision of this Sort was necessary seems to be generally admitted; and where could the Power of determining in so critical and important an Affair have been so properly lodged, as in Hands that must be supposed superior to little Temptations, and which it would be dangerous for Corruption of any Sort even to attempt. The many ill-natured Insinuations that have been uttered against this Clause serve to indicate

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(*r*) *Fleetwood's Relative Duties*, p. 43.

dicate the Malevolence of their respective
 Authors, but do not in the least contra-
 dict the Utility of the Provision it makes :
 wherefore, to endeavour a Refutation of
 such Objections would only be retailing
 their Scandal, which Decency forbids.
 Dr. *Stebbing* indeed contents himself with
 modestly saying, “ that he does not under-
 stand the full Weight of this Clause (*f*).”
 Nevertheless, at the same Time, he puts us
 in Mind of what was intended by our Re-
 formers in *Edward* the Sixth’s Time;
 wherein it was proposed to refer the De-
 cision of this Point, *ad Magistratum Ec-
 clesiasticum* (*t*), which he construes the *Bi-
 shop*, but which may with equal Propriety
 be rendered the *Chancellor* of the Diocese :
 Nor is it impossible, if the late Law had so
 appointed; but this Clause would have
 been intelligible, nor perhaps would any
 Part of the Bill have been displeasing, to
 the CHANCELLOR of SARUM. As the most
 pro-

(*f*) *Enquiry into the Force, &c.* p. 26.

(*t*) *Vide Supra*, p. 22.

professed Enemies of this Law have been
 pleased to allow there is no Room to ap-
 prehend that this Power will be abused
 under the Administration of the noble
 Lord, who, at present, presides in that
 Court; to enlarge upon this Head might
 not only be offensive to real Merit, but
 would be unnecessary and impertinent:
 However, as this Bill has been *invidiously*
 called his *Lordship's* Bill, to say thus much,
 it is hoped, will not be inexcusable; that
 supposing the Suggestion true, instead of
 reflecting any Dishonour, it is more than
 probable, that added to the Applause his
 Lordship has already universally obtained
 for his equitable Distribution of Justice,
 Posterity may think themselves under fur-
 ther Obligations to his Lordship, for having
 been the Instrument of promoting a Law
 “ solely calculated for the Support of So-
 “ ciety; by which the just Rights and
 “ Authority of Parents are vindicated;
 “ the Peace and Harmony of Families
 “ preserved; the irregular Appetites of

“ Youth restrained; and the worst and
 “ basest Kind of Seduction encountered
 “ and defeated (*u*).”

A Misfortune which has particularly attended the Objectors to this Law, is that, in order to support their Opinions, they have been obliged to advance some dangerous Positions, equally repugnant to the Honour of Religion and the Welfare of Society. Thus the reverend Doctor, who has pleaded so strongly in Behalf of the Prerogative of *Nature*, renders Matrimony independent of Religion, by insisting on the Indifference of religious Rites and Ceremonies with respect to the Validity of the Contract (*w*). And the Author who has supposed particular Vices (*x*) inseparably annexed to old Age, thereby teaches *Children*, instead of *honouring* and *obeying* (as Christ and his Apostles commanded) to hold

(*u*) Dr. Warburton's Sermon, p. 111.

(*w*) Vide *supra*, p. 53.

(*x*) *Ibid.*

hold the Persons of their Parents in Contempt, and to disregard their Authority. The Consequences of instructing young People to despise *Parental* Dominion, the most natural, as well as most ancient Kind of Government, will in all Likelihood be, to make them as careless with regard to *civil* Dominion ; for it is scarce to be expected, that disobedient Children
 “ will ever make good Citizens and Sub-
 “ jects to the Commonwealth, or good Re-
 “ lations of any Sort, failing in these Re-
 “ spects, which are most due, and paid
 “ with the greatest Ease, and accepted
 “ the most kindly (y).”

If it may be permitted to judge of the Utility of this Law from the Sense of other neighbouring Countries(z), where the same Experiment has been long since tried and ap-

(y) *Fleetwood's Relative Duties*, p. 9.

(z) Particularly *France* and *Ireland*.— Dr. *Stebbing's* Assertion (*Enquiry*, &c. p. 28.) in regard to the Effects of restrictive Laws upon Marriages in the Countries where they have prevailed is as untrue as it is uncharitable.

approved, there could not remain the least Doubt of its Expedience. It has indeed been said, that our Customs of educating Children, whereby the Sexes have a continual Intercourse with each other, serves to stimulate the Passions, and render them therefore more impatient of Restraints. This may be a very good Reason for the better regulating the Education of Children (which may be done without the Assistance of Cloysters) but it cannot be admitted a reasonable Exception against the Law in Question.

In an Undertaking professedly intended to vindicate this prudent Act of the Legislature from the malicious Clamours and unjust Reproaches of Faction or Prejudice, it may possibly, be judged, that more Notice ought to have been taken of the insolent Invectives against it, contained in a Series of imaginary Adventures, published under the Title of *the Marriage-Act*, a Novel; but as the civil Power has

has already thought fit to take Cognizance of that Performance ; to have been more particular with Respect to it here, might probably have been deemed not only an invidious Aggravation of the Author's Offence, but also an unbecoming Anticipation of public Judgment. The discerning Reader will readily perceive, that the Generality of his Stories are as improbable as they are ill applied ; and thus much Decency may be permitted to say, that such Appeals to the *Passions* ought to be justly considered as an Affront to the *Understanding* ; nor are the LADIES of *Great-Britain* under any great Obligations to their pretended Advocate for supposing their *Chastity* as loose and yielding as he represents the Contenance of most of his own Heroines. The principal Design of this Publication is to evince the Utility of the Exceptions taken against this Law, and thereby to make Room for the Exertion of sober Sense and candid Reflection to determine its Utility.

Here,

Here, MY LORD, I conclude, with only this Excuse for intruding on your Lordship, that however defective I may appear in the Execution of my Purpose, the Intention of it was honest. What Art and Industry has been employed to inflame the Passions of the People against this Law, and consequently against its professed Advocates, Your Lordship cannot be a Stranger to. Should any of the above Observations prevail so far as to remove or abate the Prejudices Discontent or Disaffection may endeavour to propagate, it will be a full Compensation for my little Trouble, and what alone can be expected to recommend to Your Lordship's Notice this trifling Production of

MY LORD,

**MUSEUM
BRITANNICUM**

Your Lordship's most devoted,

and most obedient Servant,

TANFIELD LEMAN.

